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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057110
Party	Plaintiff Rin, Inc. Jeff Miller Max Kleven
Correspondence Address	KEVIN M WELCH THE LAW OFFICE OF KEVIN M WELCH PO BOX 494 HERMOSA BEACH, CA 90254 UNITED STATES kevin@kmwlawoffice.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Kevin M. Welch
Filer's e-mail	kevin@kmwlawoffice.com
Signature	/Kevin M. Welch/
Date	06/18/2013
Attachments	Motion.pdf(290349 bytes) Exhibit A- Complaint.pdf(2860287 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Jeff Miller, Max Kleven, and Rin, Inc.)	Petition for Cancellation No.: 92057110
)	Registration Nos.: 3111161, 2969852, 3582436,
)	2538312, 2384745, and 1763135
)	
Petitioner,)	Regarding the Mark: RIN TIN TIN and
v.)	RIN TIN TIN CANINE AMBASSADOR CLUB
)	
)	PETITIONER'S MOTION TO SUSPEND
Daphne Hereford,)	PROCEEDINGS PENDING FINAL
)	DISPOSITION OF A CIVIL ACTION
Respondent.)	
)	

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

Petitioners Jeff Miller, Max Kleven, and Rin, Inc. hereby move the Board to Suspend Proceedings Pending Final Disposition of a Civil Action between the parties involving, *inter alia*, the validity and disposition of United States Trademark Registration Nos.: 3111161, 2969852, 3582436, 2538312, 2384745 and 1763135 which are the registrations at issue in this Petition for Cancellation. The civil action is currently pending in United States District Court for the Central District of California and is captioned *Max Kleven, et al. v. Daphne Hereford, et al.*, civil action no: 13-CV-02783-ABC (AGRx) (hereinafter the “Civil Action”).

Pursuant to 37 C.F.R. §2.117(a), “*whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.*”

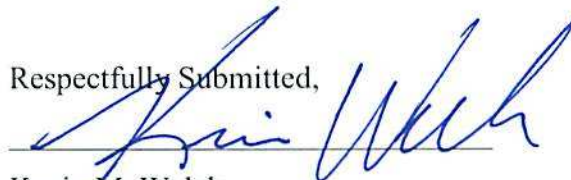
The Board has exercised its discretion to suspend a proceeding pending the outcome of a civil action many times before. *See General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992); *Toro Co. v. Hardigg Industries, Inc.*, 187 USPQ 689 (TTAB 1975), *rev'd on other grounds*, 549 F.2d 785, 193 USPO 149 (CCPA 1977); *Other Telephone*

Co. v. Connecticut National Telephone Co., 181 USPQ 125 (TTAB 1974); *petition denied*, 181 USPQ 779 (Comm'r 1974); *Tokaido v. Honda Associates Inc.*, 179 USPQ 861 (TTAB 1973); and *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805 (TTAB 1971).

In the matter at hand, the Complaint in the Civil Action alleges that the above referenced trademark registrations should be cancelled for all the reasons stated in this present Petition for Cancellation and therefore involves all the same questions of fact and law. Further, Petitioner submits that the District Court's ruling in the Civil Action will have significant bearing on the present Petition for Cancellation. A copy of the Complaint in the Civil Action is attached to this Motion as Exhibit A.

At this time, for the reasons stated above and for judicial economy, Petitioners respectfully request that the Board exercise its discretion to suspend proceedings related to this present Petition for Cancellation until the resolution of the aforementioned Civil Action.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Kevin Welch", is written over a horizontal line.

Kevin M. Welch
The Law Office of Kevin M. Welch
P.O. Box 494
Hermosa Beach, CA 90254
Tel: (310) 929-0553
Email: kevin@kmwlawoffice.com
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PETITIONER'S MOTION TO SUSPEND PROCEEDINGS PENDING FINAL DISPOSITION OF A CIVIL ACTION has been served upon William Propp, counsel for Respondent Daphne Hereford, via U.S. Mail, on June 18, 2013 at the following address:

William Propp
8149 Santa Monica Boulevard #245
West Hollywood, CA 90046
propplegal@gmail.com

Dated: June 18, 2013

By: 
Kevin M. Welch

The Law Office of Kevin M. Welch
P.O. Box 494,
Hermosa Beach, CA 90254
Tel.: (310) 929-0553
Fax: (310) 698-1626
Email: kevin@kmwlawoffice.com

Attorney for Petitioners
Jeff Miller, Max Kleven, and
Rin, Inc.

1 LAW OFFICE OF KEVIN M. WELCH
2 Kevin M. Welch, Esq. (SBN 254565)
3 Kevin@kmwlawoffice.com
4 P.O. Box 494
Hermosa Beach CA 90254-0494
Tel.: (310) 929-0553 Fax: (310) 698-1626

5 LAW OFFICE OF DAVID L. GERNSBACHER
6 David L. Gernsbacher, Esq. (SBN 089596)
7 dgersnbacher@dlglaw.com
8 9107 Wilshire Boulevard Suite 450
Beverly Hills CA 90210-5535
9 Tel.: (310) 550-0125 Fax: (310) 550-0608

10 Attorneys for the Plaintiffs, Max Kleven and Rin, Inc.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

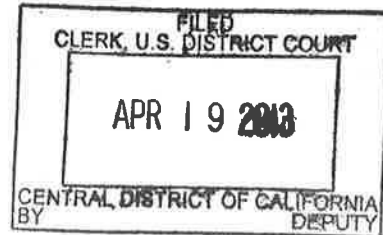
15 MAX KLEVEN, an individual; RIN,
16 INC., a California corporation,

17 Plaintiffs,

18 v.

19 DAPHNE HEREFORD, an
20 individual; RIN TIN TIN, INC., a
21 Texas Corporation; BELLEAIR
22 TRADING INTERNATIONAL,
23 LLC, a Florida limited liability
company DOES 1 through 20,
inclusive,

24 Defendants.
25
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Case No.

CV 13-02783 - ABC
(AG/ky)

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

1. **COPYRIGHT INFRINGEMENT**
[17 U.S.C. §§101, *et seq.*];
2. **FEDERAL UNFAIR
COMPETITION** [Lanham Act
§43(a)];
3. **FALSE ASSOCIATION** [Lanham
Act §43(a)];
4. **FALSE ENDORSEMENT** [Lanham
Act §43(a)];
5. **FALSE REPRESENTATION**
[Lanham Act §43(a)];
6. **COMMON LAW TRADEMARK
INFRINGEMENT** [Lanham Act

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- §43(a)];
- 7. **FEDERAL ANTI-CYBERSQUATTING ACT**
[Lanham Act §43(c)];
- 8. **FEDERAL TRADEMARK DILUTION** [Lanham Act 43(c);
- 9. **CANCELLATION OF UNITED STATES FEDERAL TRADEMARK REGISTRATION**
[Trademark Act §2(a)];
- 10. **CANCELLATION OF UNITED STATES FEDERAL TRADEMARK REGISTRATIONS**
[Trademark Act §14(3), *et seq.*];
- 11. **CANCELLATION OF UNITED STATES FEDERAL TRADEMARK REGISTRATION**
[*Fraud - Torres v. Cantine Torresella*];
- 12. **UNFAIR COMPETITION** [Cal. Bus. & Prof. Code §17200, *et seq.*];
- 13. **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT** [Cal. Civ. Code § 1750, *et seq.*];
- 14. **COMMON LAW UNFAIR COMPETITION;**
- 15. **COMMON LAW INFRINGEMENT;**
- 16. **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
- 17. **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
- 18. **BREACH OF SETTLEMENT**

AGREEMENT;

**19. SPECIFIC PERFORMANCE OF
SETTLEMENT AGREEMENT;**

**20. RESCISSION - FAILURE OF
CONSIDERATION, FRAUD,
PROMISSORY FRAUD AND,
ESTOPPEL;**

**21. ELDER FINANCIAL ABUSE [Cal.
Welfare & Institutions Code §
15610.30].**

DEMAND FOR JURY TRIAL

Plaintiffs Max Kleven (“Kleven”) and RIN, Inc. (collectively, “Plaintiffs”) allege on personal knowledge as to their own actions, and upon information and belief as to the actions of others, as follows:

INTRODUCTION

1. This is an action in law and equity for, *inter alia*, Copyright Infringement, Federal Unfair Competition, False Association, False Endorsement, False Representation, Common Law Trademark Infringement, Federal Anti-Cybersquatting, Federal Trademark Dilution, California Unfair Competition, California Consumer Remedies Act, and the Cancellation of United States Federal Trademark Registrations regarding the intellectual property rights associated with the American television series and movie icon named Rin Tin Tin.

2. The sole source or “basis” of the multiple attempts to unlawfully exploit the name and fame of the character Rin Tin Tin is the purchase by the grandmother of Defendant Daphne Hereford (“Hereford”) of a German Shepherd dog which may have been a descendant of the dog Rin Tin Tin. That – and that alone – is the sum total of the “basis” for Defendants’ hijacking of this icon of American television, film and culture.

///

PLAINTIFFS' RIN TIN TIN HISTORY

3. The story of Rin Tin Tin began in September of 1918, when a Lieutenant Lee Duncan ("Duncan") discovered a litter of newborn German Shepherd puppies on a World War I battlefield in Flirey, France. Duncan rescued the litter and kept one male and one female for himself whom he named Rin Tin Tin and Nanette, respectively. Throughout the remainder of his deployment, Duncan grew hopelessly devoted to his puppies, spending the majority of his free time caring for them and training them. Upon Duncan's return to the states, he brought Rin Tin Tin and Nanette on the fifteen day journey across the Atlantic and was lucky enough to find a German Shepherd breeder in New York who agreed to board them both during the ten days of re-entry camp where troops were debriefed and deloused.

4. Unfortunately, the travel was too much for Nanette who caught pneumonia and died during this time, but the breeder provided Duncan with another female puppy, whom Duncan also named Nanette, and who would eventually become known as Rin Tin Tin's wife. Duncan continued his journey home to California where, like many soldiers returning home, he faced the challenge of reintegrating into civilian life.

5. Duncan returned to the job he had before the war in the gun department of a sporting-goods store, but the war had left him with a distaste for guns, and his focus continued to be his passion for his dogs and demonstrating Rin Tin Tin's training at dog shows. Duncan met other German Shepherd enthusiasts in the Los Angeles area and founded the Shepherd Dog Club of California.

6. One day, Duncan and Rin Tin Tin, whom Duncan nicknamed "Rinty," were accompanied to a dog show by a friend who brought with him a newly developed slow motion camera. That day Rin Tin Tin competed in the "working dog" part of the show and took first place by cleanly jumping a wall made of wooden planks nearly twelve feet tall. Duncan's friend caught the act on film.

1 After this day Duncan became increasingly interested in getting Rinty on film.

2 7. Hollywood movies at this time had no sound track or dialog, so
3 everything had to be conveyed by action and facial expressions. Duncan was
4 convinced that Rin Tin Tin would be perfect for this media so he brought him
5 down to "Poverty Row" where all the movie studios were located and tried to meet
6 with anyone who would give him a moment of their time.

7 8. Rin Tin Tin eventually got a few bit parts playing a wolf or a wolf-
8 hybrid and was able to demonstrate that he was well-trained and easy to work with.
9 Meanwhile, Duncan began writing a screenplay called "*Where the North Begins*"
10 in which Rin Tin Tin would play the leading role. Adding fuel to his new plan,
11 about this time, a newsreel company contacted Duncan and offered to pay three
12 hundred and fifty dollars for the film of Rinty jumping over the wall to play in
13 theaters around the Los Angeles area. This was equivalent to about three months of
14 salary for Duncan.

15 9. After Duncan finished his screenplay, he began trying to find a
16 director and producer to make his movie. Duncan and Rinty returned to Poverty
17 Row for hours each day knocking on doors and pitching the screenplay to anyone
18 who would listen. Finally, a small studio owned by four brothers, the Warner
19 brothers, agreed to make the picture.

20 10. 1923's *Where the North Begins* was an enormous success often
21 credited with saving Warner Bros. from bankruptcy. Warner Bros. made twenty-
22 four more movies starring Rin Tin Tin, each of which was enormously popular,
23 earning Rin Tin Tin the nickname "The Mortgage Lifter" by Jack Warner. He had
24 become a household name throughout the country as a true movie star. In 1927 the
25 Academy Awards were presented for the first time and Rinty received the most
26 votes for "Best Actor," but the members of the Academy decided that the Oscar
27 should go to a human so the votes were recalculated. Rin Tin Tin was not only
28 recognized in America, he quickly gained recognition internationally.

1 11. Jack Warner once reminisced that when seated next to the countess at
2 a dinner in Vienna in 1927, it was not until he mentioned that he produced the Rin
3 Tin Tin films that he received any recognition. That same year film enthusiasts
4 recognized Rin Tin Tin as the most popular actor in Berlin. Rin Tin Tin had
5 become one of the world's first international movie stars.

6 12. All the while Duncan was breeding Rin Tin Tin and Nanette. They
7 had several puppies, most of which Duncan either sold or gave away to prominent
8 people such as Greta Garbo, W.H. Kellogg and Jean Harlow. As Rin Tin Tin
9 began to show signs of age, Duncan began carefully selecting a few puppies and
10 training them to follow in their father's footsteps. The general consensus seems to
11 be that none of Rinty's progeny were as talented as their father but nonetheless
12 several had successful acting careers.

13 13. By this time, Rin Tin Tin had transitioned from the name of a single
14 dog to a fictional character and a legacy; so when the younger generations made
15 their film debuts, they played the part of Rin Tin Tin and no introduction was made
16 and no attention was drawn to the succession. Duncan used to famously say,
17 "There will always be a Rin Tin Tin!"

18 14. When the original Rin Tin Tin died in 1932, America treated his death
19 as a national event. Regularly scheduled broadcasting was interrupted coast to
20 coast to report the event, the next day there was an hour long tribute to the life of
21 Rin Tin Tin, and newspapers throughout the country ran long and detailed
22 obituaries. The *Chicago Tribune* wrote "the greatest of all dog actors became a
23 memory and a tradition."

24 15. Throughout the 1930's and 1940's Rinty's progeny, Rin Tin Tin, Jr.
25 and Rin Tin Tin III, continued to play the part of Rin Tin Tin in movies and even
26 radio broadcasts, although the "barking" on the radio broadcasts was generally
27 done by a human leaving a very small role for a dog to play.

28 16. The popularity of Rin Tin Tin experienced a second surge upon the

1 advent of television. Several television producers had approached Duncan for the
2 rights to produce a Rin Tin Tin television program but it was not until a young
3 producer named Herbert Leonard ("Leonard") approached him that Duncan agreed.
4 The television show was called *The Adventures of Rin-Tin-Tin* (Leonard
5 hyphenated the name) and featured a young boy and his dog who were orphaned
6 by an Apache Indian raid and adopted by a U.S. Cavalry unit.

7 17. It was originally supposed to star Duncan's Rin Tin Tin IV. However,
8 Rin Tin Tin IV, who may or may not have been related to the original Rinty, did
9 not audition well. Accordingly, the part of Rin Tin Tin was primarily played by
10 another trainer's dog, named Flame, Jr. *The Adventures of Rin-Tin-Tin* was
11 extremely successful and ran from October 1954 to May 1959, and reruns were
12 broadcast from October 1959 until September 1964. In 1960, Rin Tin Tin was
13 honored with a star on the Hollywood Walk of Fame, one of only three stars ever
14 awarded to animals (Lassie and Strongheart were the others).

15 18. Leonard and Duncan also successfully merchandized the television
16 show. Almost as soon as the *The Adventures of Rin-Tin-Tin* was on the air, you
17 could buy a Rin-Tin-Tin cavalry mess kit, uniform, hat, bugle, gun, and holster, as
18 well as a recording of the 101st Cavalry bugle calls, cavalry belt-and-suspender
19 sets, a Rin-Tin-Tin branded pocket knife, a telescope, a walkie-talkie, a beanie, a
20 pennant, a 3-D color viewer with viewer cards, a brass magic ring, a pinback
21 button, a Wonder Scope, a lunch box, a thermos bottle, a wallet, slippers, jigsaw
22 puzzles, and all sorts of mechanical games. Many of these items are still on the
23 market today, being sold on eBay and similar internet sites.

24 19. Cheerios cereal included premiums for *The Adventures of Rin-Tin-Tin*
25 plastic totem poles; Nabisco Wheat Honeys offered coupons for six different Rin-
26 Tin-Tin masks; you could even buy a Chrysler that was endorsed by "the best
27 mounted cavalry in the world."

28 20. In 1975, Leonard recycled *The Adventures of Rin-Tin-Tin* by

1 scrubbing it of offensive language and racial references to Native Americans and
2 filming “wraparound” scenes to introduce the episodes where the original actors
3 would appear in a rustic setting and explain the old days of the Cavalry to a group
4 of multicultural children. The press release for the scrubbed-up version stated
5 “After Coca-Cola and IBM, Rin-Tin-Tin is the most widely known and
6 immediately identifiable name in the world today....” By the end of 1976, the
7 show was airing five days a week in more than 85 percent of the country.

8 21. By 1978, video rental stores had popped up across the country and the
9 market for children’s shows grew more competitive. A method of adding color to
10 black and white film had been invented and Leonard became convinced that he
11 should colorize the Rin Tin Tin films to keep them marketable. The process cost a
12 fortune but people trusted Leonard. Eva Duncan, the wife of the late Duncan,
13 turned over all the Copyrights that were in her name to Leonard and Leonard
14 borrowed against everything that he had. Unfortunately, the gamble was a disaster
15 because the colorized and scrubbed versions still did not compete well with
16 contemporary programming.

17 22. However, Leonard, who was one of the most prolific television
18 producers that ever existed, continued to pitch programming featuring Rin Tin Tin.
19 He wrote a script called *Rin Tin Tin the Tracker*, in which a dog worked with fish
20 and wildlife agents; *Rin Tin Tin the Ultimate Weapon* about a canine who receives
21 superpowers through a horde of flees that escaped from a science lab; *Rin Tin Tin*
22 *Private Investigator*; and *Rin Tin Tin Secret Agent* about a 14-year-old whiz kid
23 who owns the smartest dog in the world.

24 23. In 1984, the Christian Broadcasting Network (“CBN”) ordered
25 twenty-two episodes of a show called *Rin Tin Tin K-9 Cop* which was also called
26 *Katts and Dog* in Canada but the deal ended in litigation because Leonard was
27 newly remarried and didn’t want to relocate to the production site in Canada.

28 24. In 1994, Disney paid Leonard one hundred thousand dollars for a first

1 look at a script called *River of Gold* featuring the struggles and adventures of a
2 farm family in the 1960's with their dog Rin Tin Tin. The deal included a promise
3 of one million dollars if the studio decided to buy it. Unfortunately, Frank Wells,
4 the Disney executive that had been championing the project, died in a helicopter
5 crash in April of that year and the project died as well.

6 25. Leonard was liked and trusted by most everyone that knew him but at
7 this time in his life his luck had turned and he owed large amounts of money to
8 many people. In 2002, he was diagnosed with cancer and shortly thereafter moved
9 in with his longtime friend Kleven who was one of the stuntmen in *The Adventures*
10 *of Tin-Tin-Tin*. In resolution of a large debt owed to Kleven, in 2005 Leonard
11 assigned all of intellectual property rights in Rin Tin Tin to Kleven. Kleven
12 became the legal owner of all of the copyrights and common law trademarks rights
13 in and to the Rin Tin Tin legacy.

14 26. Beginning with Duncan in 1923, then Duncan and Leonard, then
15 Leonard, alone, then Leonard and Kleven, then Kleven, alone, and now Kleven and
16 Rin, Inc., the originator of the Rin Tin Tin legacy and his lawful successors have
17 continuously created, pitched, marketed and promoted Rin Tin Tin for almost a
18 century.

19 **DEFENDANTS' "RIN TIN TIN HISTORY"**

20 27. The story of Hereford and her company, Defendant Rin Tin Tin, Inc.,
21 and Belleair Trading International, LLC ("Belleair") (collectively, "Defendants")
22 begins some 50 years after Duncan discovered the litter of German Shepherd
23 puppies on a World War I battlefield, and long after the name and character Rin
24 Tin Tin had become known world-wide through movies, television shows, books
25 and merchandise.

26 28. In 1956, in his usual pile of fan mail and puppy requests, Duncan
27 received a letter from a woman named Jannettia Propps Brodsgaard
28 ("Brodsgaard"). Brodsgaard explained to Duncan that she had wanted a dog like

1 Rin Tin Tin ever since she saw *Where the North Begins* in 1923.

2 29. In 1957, Duncan sold Brodsgaard a German Shepherd puppy which
3 he represented as being one of Rin Tin Tin IV's puppies. This was the first of four
4 puppies that he sold to her. Brodsgaard and eventually her granddaughter,
5 Hereford, began to breed and sell the puppies with the apparent intent of
6 preserving the purported Rin Tin Tin bloodline. This in itself was not an issue, but
7 Hereford began to confuse her ownership of dogs which purportedly shared the
8 bloodline of the dog Duncan found in France in 1918 with the ownership of the
9 Rin Tin Tin legacy – and the unlawful exploitation of the iconic Rin Tin Tin
10 character, name and fame.

11 30. In 1993, Hereford sent Leonard a letter stating “*Your dedication to*
12 *Rin Tin Tin over the years is to be commended....Like you, my dedication has*
13 *lasted for many years....I am very interested in a revitalization of Rin Tin Tin and*
14 *would like to discuss with you the possibilities. I understand that Lassie and Benji*
15 *are presently working on feature films and a Rin Tin Tin film would certainly*
16 *attract a larger audience . . .*”

17 31. Having spent the better part of his life producing Rin Tin Tin films
18 and television shows and realizing that Hereford had filed for a federal trademark
19 registration for the mark RIN TIN TIN, Leonard found this letter more ominous
20 than friendly, and he replied with a six-page cease & desist letter. By 1994 the
21 situation had devolved into the filing of an action entitled *Herbert B. Leonard v.*
22 *Daphne Hereford, et al.* 2:94-cv-02281-CBN-JR, which dragged on for more than
23 two years before it was dropped pursuant to a purported settlement agreement that
24 was placed on the record in open court (the Leonard v. Hereford Settlement”).

25 32. After days of negotiations, on January 8, 1996, Leonard and Hereford
26 and their respective attorneys appeared before The Honorable Consuelo B.
27 Marshall, United States District Judge, to place the Leonard v. Hereford Settlement
28 on the record. A true and correct copy of the transcript of the January 8, 1996-

1 Leonard v. Hereford Settlement hearing is attached hereto as Exhibit A and
2 incorporated herein by this reference.

3 33. In the Leonard v. Hereford Settlement, Hereford stipulated to the
4 following findings:

5 a. "Herbert B. Leonard has common law trademark rights in Rin
6 Tin Tin." Transcript at 4:1 8-19.

7 b. "Herbert B. Leonard was assigned rights in the Rin Tin Tin mark
8 and character by Lee Duncan in the 1950s." Transcript at 5:1-3.

9 c. "Herbert B. Leonard acquired all residual rights from Ima [sic]
10 Duncan in the Rin Tin Tin mark and character pursuant to certain agreements dated
11 April 4, 1978." Transcript at 5:4-6.

12 d. "[S]o long as Daphne Hereford's use of the Rin Tin Tin mark is
13 limited to identifying her dogs as descendants of Rin Tin Tin IV in connection with
14 the breeding, raising, training, and selling of German Shepherd dogs, such use is
15 not likely to cause confusion with Herbert B. Leonard's use of the Rin Tin Tin
16 mark and character." Transcript at 5: 7-12.

17 34. In the Leonard v. Hereford Settlement, Hereford received a limited
18 right to use the Rin Tin Tin mark solely "in connection with fan club services,
19 provided that she identifies such fan club as being under license from Herbert B.
20 Leonard." Transcript at 6:14-16. Hereford was also allowed to continue selling
21 German Shepherd dogs with the indication that such dogs were descendants of Rin
22 Tin Tin IV. Id. at 8. However, Hereford agreed that "Daphne Hereford may not use
23 the Rin Tin Tin mark, except with a Roman Numeral to describe her dogs as line-
24 bred descendants of Rin Tin Tin IV." Id. at 8:20-24.

25 35. Upon inquiry by the Court, Hereford declared that she "had an
26 understanding of the terms and conditions of the settlement." Transcript at 30:9-12.
27 Hereford further assured the Court that she would abide by the terms and
28 conditions of the settlement. Id. at 31:6-7.

1 36. The Leonard v. Hereford Settlement, including the stipulations of fact
2 and law and the negotiated terms and conditions, are binding on Hereford and her
3 assigns.

4 37. Unfortunately, despite the Leonard v. Hereford Settlement, there were
5 other lawsuits to follow, including *Kleven et al v. Daphne Hereford et al*, 2:06-cv-
6 00785-CBM-JTL (filed 2/10/2006) and *Rin Tin Tin Incorporated, et al. v. Herbert*
7 *B. Leonard, et al*, 2:06-cv-03699-CAS-JWJ (filed in Texas on 6/14/2006), the
8 latter ordered transferred to California, and which was subsequently the subject of
9 a purported settlement agreement that long ago was rendered a nullity due to
10 Hereford's fraud and wholesale breach and, ultimately, complete disregard by
11 Hereford and her company Defendant Rin Tin Tin, Inc.

12 38. Defendants' infringing behavior has persisted to this day. Defendants'
13 continued efforts to commandeer the Rin Tin Tin legacy include, without limitation,
14 the fraudulent filing of federal trademark applications for the mark Rin Tin Tin,
15 marketing for sale merchandise clearly – but falsely – advertised and depicted as
16 being part of the Rin Tin Tin legacy, and falsely representing to others that they and
17 they alone are the rightful holders of that legacy. Despite having absolutely no
18 connection to the creation or ownership of any original or authorized film or
19 television works featuring – and which created – the Rin Tin Tin icon, Defendants
20 are attempting to profit off the creative efforts of the true owners of the RIN TIN
21 TIN trademark and copyrights in the works that feature the fictional character Rin
22 Tin Tin.

23 39. This is not the first time the Courts have addressed the issue of
24 unrelated third parties attempting to register names of well-known characters in
25 copyrighted works. Similar cases have arisen regarding the trademarks KING
26 KONG, ARCHIE, ARTHUR the AARDVARK, JAMES BOND, THE
27 CHIPMUNKS, CONAN THE BARBARIAN, E.T., the Extra-Terrestrial,
28 GODZILLA, FRANK MERRIWELL, MICKEY and MINNIE MOUSE,

1 PLASTIC MAN, SUPERMAN and TARZAN.

2 40. Although somewhat varied in their precise reasoning, Courts have
3 consistently found that attempting to profit from the popularity of another's fictional
4 character is unlawful. (See *Tristar Pictures, Inc. v. Del Taco, Inc.*, 59 U.S.P.Q.2d
5 1091, 1999 WL 33260839 (C.D. Cal. 1999) (When the public associates a
6 character, such as ZORRO, with visual images in a popular movie, then the party
7 who claims ownership of merchandising trademark rights should own a copyright or
8 be licensed to use a copyright in the motion picture visual image.). *Edgar Rice*
9 *Burroughs, Inc. v. Charlton Publications, Inc.*, 243 F. Supp. 731, 145 U.S.P.Q.
10 655 (S.D. N.Y. 1965); *Edgar Rice Burroughs, Inc. v. Manns Theatres*, 195
11 U.S.P.Q. 159, 1976 WL 20994 (C.D. Cal. 1976) (Famous character names, such as
12 TARZAN, in copyrighted works may not be used by others during the life of the
13 copyright without the authorization of the copyright owner) – what Defendants have
14 done is no different than an ARCHIE comic book collector buying a vintage Archie
15 comic and then laying claim to the exploitation of the ARCHIE character the
16 collector neither created nor lawfully acquired.

17 41. Plaintiffs, and their predecessors-in-interest, have continually and
18 consistently to this day utilized the RIN TIN TIN intellectual property including,
19 without limitation, all copyrights and the trade name, in the stream of commerce –
20 in entertainment, literature, consumer products, merchandising and licensing –
21 since Duncan wrote and Warner Bros. produced “Where the North Begins” in
22 1923, a span of 90 years.

23 THE PARTIES

24 42. Kleven is an individual and resident of the state of California, and
25 currently resides in the County of Los Angeles, California.

26 43. Rin, Inc. is a California corporation, licensed to do business and
27 doing business in the County of Los Angeles, California.

28 44. Plaintiffs are informed and believe, and on that basis allege, that

1 Hereford is an individual and resident of the state of Texas with a mailing address
2 of P.O. Box 27, Crockett, TX 75835.

3 45. Plaintiffs are informed and believe, and on that basis allege, that Rin
4 Tin Tin, Inc. is a corporation organized under the laws of the state of Texas with a
5 mailing address of P.O. Box 27, Crockett, TX 75835.

6 46. Plaintiffs are informed and believe, and on that basis allege, that
7 Belleair is a limited liability company organized under the laws of the state of
8 Florida with a mailing address of 8 Belleview Boulevard, Suite 508, Belleair,
9 Florida 33756.

10 47. The true names, and identities or capacities, whether individual,
11 associate, corporate or otherwise of DOES 1 through 20, inclusive, are unknown to
12 Plaintiffs, who therefore sue said defendants by fictitious names. Plaintiffs are
13 informed and believe, and on that basis allege, that each of the defendants sued
14 herein as a DOE are legally responsible in some manner for the events and
15 happenings referred to herein. When the true names, identities and capacities of
16 such fictitiously designated defendants are ascertained, Kleven will ask leave of
17 the Court to amend this complaint to insert said true names, identities and
18 capacities, together with proper charging allegations.

19 JURISDICTION AND VENUE

20 48. This is an action seeking permanent injunctive relief, trademark
21 cancellation, monetary remedies, other equitable remedies, and attorneys' fees
22 based on the, *inter alia*, copyright infringement, common law trademark
23 infringement, and stated and federal unfair competition and anti-cybersquatting of
24 Defendants in connection with the unauthorized use of the Rin Tin Tin Intellectual
25 Property rights. These unlawful acts have occurred in the State of California, and
26 more specifically in the Central District of California.

27 49. This Court has subject matter jurisdiction over this lawsuit pursuant to
28 15 U.S.C. §§ 1121 and 1125(a), 17 U.S.C. §§101 *et seq.*, and 28 U.S.C. §§1331,

1 1338, and 1367, and pursuant to the Court's pendent jurisdiction.

2 50. This Court has personal jurisdiction over Hereford because, *inter alia*,
3 Hereford, through her advertising and sales to customers located in California and
4 in this district, is present in this judicial district, transacts business in this judicial
5 district, and has committed acts in this judicial district upon which the claims
6 asserted in this lawsuit are based.

7 51. This Court has personal jurisdiction over Rin Tin Tin, Inc. because,
8 *inter alia*, Rin Tin Tin, Inc., through its advertising and sales to customers located
9 in California and in this district, is present in this judicial district, transacts
10 business in this judicial district, and has committed acts in this judicial district
11 upon which the claims asserted in this lawsuit are based.

12 52. Venue is proper in the Central District of California pursuant to 28
13 U.S.C. §§1391(b), (c), (d), and 1400(a) and (b).

14 **PLAINTIFFS AND THEIR BUSINESS**

15 53. By assignment on or about December 10, 2005, Kleven became the
16 sole owner of the copyrights, in the United States and worldwide, to all of the
17 works featuring the iconic fictional German Shepherd character named Rin Tin Tin
18 that were owned by Rin Tin Tin's owner and creator, Duncan.

19 54. Kleven received all common law trademark rights to the name and
20 image of the iconic fictional German Shepherd character named Rin Tin Tin
21 owned by Leonard in the United States and worldwide by assignment executed
22 December 10, 2005.

23 55. The common law trademark rights to the name and image of the
24 fictional German Shepherd character named Rin Tin Tin that Kleven received by
25 assignment executed December 10, 2005 inured through use that began decades
26 before Hereford or Rin Tin Tin, Inc. ever used the mark RIN TIN TIN in United
27 States commerce.

28 56. The Rin Tin Tin copyright and common law trademarks rights in and

1 to the iconic fictional German Shepherd character named Rin Tin Tin are
2 collectively referred to herein as the “Rin Tin Tin Rights.”

3 57. On or about February 1, 2013, Kleven assigned Fifty percent (50 %) of the Rin Tin Tin Rights to Sasha Jenson (“Jenson”), Casey La Scala (“La Scala”) and Jeff Miller (“Miller”) in equal shares. Miller, Jenson and La Scala
6 subsequently assigned their 50% interest in the Rin Tin Tin Rights to Rin, Inc.

7 58. Kleven and Rin, Inc., Plaintiffs herein, are the owners of the
8 copyrights in multiple works registered with the United States Copyright Office
9 that feature the iconic fictional German Shepherd character named Rin Tin Tin.

10 59. Many of the multiple copyrighted works featuring the iconic fictional
11 German Shepherd character named Rin Tin Tin have been available for purchase
12 and/or viewing in one form or another continuously, since their very creation for
13 decades. This continuous and exclusive use inures to the benefit of Plaintiffs via
14 the assignment from Duncan to Leonard, from Leonard to Kleven and from Kleven
15 to Kleven and Rin, Inc. Accordingly, Plaintiffs have been using the common law
16 trademark in the name and image of the iconic fictional German Shepherd
17 character named Rin Tin Tin continuously in United States (and international)
18 commerce from the date of the creation of the various works, beginning in 1923
19 and continuing to this very day.

20 60. The multiple copyrighted works owned by Plaintiffs that feature the
21 iconic fictional German Shepherd character named Rin Tin Tin will remain live
22 and enforceable for many years to come.

23 61. Plaintiffs are interested in and continue to pursue the production of
24 more movies and/or television shows featuring the iconic fictional German
25 Shepherd character named Rin Tin Tin.

26 62. Plaintiffs are also interested in and continue to pursue the exploitation
27 the merchandizing, licensing and other opportunities related to and featuring the
28 iconic fictional German Shepherd character named Rin Tin Tin.

1 63. Defendants' unlawful claim to intellectual property rights in the name
2 of the iconic fictional German Shepherd character Rin Tin Tin significantly interferes
3 with Plaintiffs' ability to attract and secure movie production investment funding.

4 64. Defendants' unlawful claim to intellectual property rights in the name
5 of the iconic fictional German Shepherd character Rin Tin Tin significantly
6 interferes with Plaintiffs' ability to effectively license and merchandize his
7 intellectual property rights in the name and image of the iconic fictional German
8 Shepherd character named Rin Tin Tin.

9 65. Plaintiffs very conservatively estimate that Defendants' unlawful
10 actions have, to date, damaged Plaintiffs monetarily in an amount of no less than
11 Five Million Dollars (\$5,000,000).

12 66. Defendants' unlawful claim to the intellectual property rights in the
13 name of the iconic fictional German Shepherd character named Rin Tin Tin poses
14 a serious threat to the continued growth and proliferation of the Rin Tin Tin legacy.

15 **DEFENDANTS' WRONGFUL ACTS RELATED TO**
16 **THE INTELLECTUAL PROPERTY AT ISSUE**

17 67. Defendants hold a false and misguided belief that because they
18 purchased puppies purportedly sired by Rin Tin Tin IV, which may not even be
19 related by blood to the original Rin Tin Tin, that Defendants have somehow also
20 acquired an ownership or custodial interest in the legacy of the character Rin Tin
21 Tin.

22 68. Defendants hold the false and misguided belief that receiving a federal
23 trademark registration through fraud and omission confers upon them legally
24 enforceable trademark rights.

25 69. At all times relevant to this Complaint, Defendants were aware of
26 Kleven's, or his predecessor Leonard's, ownership of the copyrights in multiple
27 works featuring the fictional German Shepherd character named Rin Tin Tin.

28 70. Defendants' choice to begin using the mark RIN TIN TIN was not

1 independent or coincidental, but rather a deliberate and intentional reference to and
2 pirating of the iconic fictional German Shepherd character named Rin Tin Tin
3 featured in the many copyrighted works owned by Plaintiffs.

4 71. Defendants were in no way involved in or related to the authorship or
5 production of the multiple works that created or contributed to the legacy of the
6 iconic fictional German Shepherd character named Rin Tin Tin, but instead have
7 attempted to commandeer the legacy of that famous character, and profit from it
8 through aggressive and fraudulent acquisitions of federal trademark registrations.

9 72. Defendants have no ownership in any of the multiple works that
10 created or contributed to the legacy of the iconic fictional German Shepherd
11 character named Rin Tin Tin that exists today.

12 73. Defendant have never received authorization from any owner of one
13 or more of the multiple copyrighted works that created or contributed to the legacy
14 of the iconic fictional German Shepherd character named Rin Tin Tin to create a
15 derivative work. Therefore, Defendants cannot have legally acquired any
16 copyrights in any works created by Defendants that feature the iconic fictional
17 German Shepherd character named Rin Tin Tin.

18 74. Defendants have deliberately and willfully attempted to profit from
19 creating a false association between themselves and the source of the popular and
20 successful copyrighted fictional works featuring the iconic fictional German
21 Shepherd character named Rin Tin Tin that are now owned by Plaintiffs.

22 75. Defendants make multiple false and unlawful representations in
23 connection with the commercial sale, or the offer to sell, goods that are likely to
24 lead consumers to believe that Defendants are associated or affiliated with the
25 source of the multiple copyrighted works that feature the iconic fictional German
26 Shepherd character named Rin Tin Tin.

27 76. Hereford, Rin Tin Tin, Inc., and/or Belleair are currently listed as the
28 owners of the following federal trademark registrations (collectively, "Defendants'

Federal Trademark Registrations”):

Reg. No.	Mark	Good/Services
4263551	RIN TIN TIN	<i>Entertainment services in the field of motion pictures featuring a German Shepherd dog in international class 041.</i>
3215700	RIN TIN TIN	<i>Dog clothing; Dog collars; Dog leashes; Dog shoes; Handbags; Purses; Tote bags in international class 018; Bowls; Brushes for pets; Cups; Mugs; Pet brushes; Pet feeding dishes in international class 021; Hats; Jackets; Muffs; Scarves; Slippers; Sweat shirts; T-shirts in international class 025; Board games; Dog toys; Plush toys; Puzzles; Soft sculpture plush toys in international class 028.</i>
3111161	RIN TIN TIN	<i>Printed publications, namely, children's books in international class 016.</i>
2969852	RIN TIN TIN	<i>Printed publications, namely, magazines, pamphlets, books and comic books about German Shepherd dogs; activity and coloring books, posters, stickers, business cards, and cards in the nature of greeting cards and trading cards in international class 016; Playing cards in international class 028; and Entertainment services in the nature of an ongoing television series in the field of variety and motion pictures featuring a German Shepherd dog as a live or animated character in international 041.</i>

3582436	RIN TIN TIN	<i>live German Shepherd dogs of Rin Tin Tin lineage in international class 031.</i>
3380788	RIN TIN TIN	<i>Dog food in international class 031.</i>
2538312	RIN TIN TIN	<i>mail order fan club service providing materials promoting the breeding, training, raising and showing of the authentic RIN TIN TIN German Shepherd dog lineage in international class 041.</i>
2384745	RIN TIN TIN CANINE AMBASSADOR CLUB	<i>EDUCATION AND ENTERTAINMENT; NAMELY promotion of responsible dog ownership through programs presented to schools and groups in international class 041.</i>
1763135	RIN TIN TIN (Stylized)	<i>live German Shepherd puppies in international class 031.</i>

COUNT I

[Copyright Infringement - 17 U.S.C. §§101, et seq.]

77. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 76 of this Complaint as if fully set forth herein.

78. Plaintiffs are the owners of multiple works registered with the United States Copyright office that feature the iconic fictional German Shepherd character named Rin Tin Tin.

79. Defendants have had access to and are very familiar with the multiple copyrighted works that feature the iconic fictional German Shepherd character named Rin Tin Tin.

80. Defendants are currently offering for sale and selling books, cards, clothing, collars, leashes, films, dog food and treats, jewelry, photographs, plush toys, games, slippers, training and grooming supplies featuring the iconic fictional German Shepherd character named Rin Tin Tin *without authority, permission, or license.*

1 81. Defendants are currently offering for sale and selling books, cards,
2 clothing, collars, leashes, films, dog food and treats, games, jewelry, photographs,
3 plush toys, slippers, training and grooming supplies that feature an image of a
4 German Shepherd and the name Rin Tin Tin in manner that evokes a substantial
5 similarity to the iconic fictional German Shepherd character named Rin Tin Tin
6 *without authority, permission, or a license.*

7 82. Defendant did not independently choose to sell goods that feature an
8 original image of German Shepherd named Rin Tin Tin, but rather they have
9 copied the name and image from the iconic fictional German Shepherd character
10 named Rin Tin Tin that was introduced to the world in the nineteen-twenties and
11 gained popularity through the multiple copyrighted works owned by Plaintiffs.

12 83. Defendants are well aware that Plaintiffs are the owners of multiple
13 works that are registered with the United States Copyright office featuring the
14 iconic fictional German Shepherd character named Rin Tin Tin and that Plaintiffs
15 *do not approve of or authorize* Defendants' actions.

16 84. Defendant's actions in relation to offering for sale and selling goods
17 featuring a German Shepherd and the name Rin Tin Tin in manner that evokes a
18 substantial similarity to the iconic fictional German Shepherd character named Rin
19 Tin Tin is *with full knowledge* that such action violates United States copyright
20 laws, and the intent to infringe the copyrighted works.

21 85. Defendants' websites, (www.rintintin.com) and
22 (www.bellairtrading.com), are used, *inter alia*, to conduct commerce throughout
23 the United States and the world in goods that feature a German Shepherd and the
24 name Rin Tin Tin in a manner that evokes a substantial similarity to the iconic
25 fictional German Shepherd character named Rin Tin Tin featured in the multiple
26 registered copyrighted works owned by Plaintiffs.

27 86. As a direct, proximate and foreseeable result of Defendants' conduct
28 as alleged herein, Plaintiffs have suffered damage and injury including, without

1 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
2 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
3 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
4 professional acknowledgment and credits, and public fame, all according to proof.

5 87. As a further direct, proximate and foreseeable result of Defendants'
6 conduct as alleged herein, Kleven has suffered injury to Plaintiffs' persons and
7 psyches including, without limitation, great and severe emotional distress,
8 according to proof.

9 88. As a further direct, proximate and foreseeable result of Defendants'
10 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
11 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
12 under the third party/tort of another theory, according to proof.

13 89. Defendants' unlawful conduct, as alleged herein, is continuing, as is
14 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law
15 to address Defendants' continuing infringement of Plaintiffs' multiple registered
16 copyrighted works that feature the iconic fictional German Shepherd character
17 named Rin Tin Tin. Plaintiffs are therefore entitled to injunctive relief, on
18 statutory, common law and/or equitable grounds, to enjoin Defendants'
19 continuing unlawful conduct.

20 COUNT II

21 **[Federal Unfair Competition - 15 U.S.C. §1125(a), *et seq.* (Lanham Act** 22 **§43(a))]**

23 90. Plaintiffs repeat and incorporate by reference the allegations of
24 Paragraphs 1 through 89 of this Complaint as if fully set forth herein.

25 91. The Rin Tin Tin legacy was created by the hours of dedicated and
26 tireless work and creative genius by many who wrote, directed, and produced the
27 multiple television episodes and movies that brought the iconic fictional German
28 Shepherd character named Rin Tin Tin to popularity throughout the United States

1 of America and around the world.

2 92. Without investing the time, effort, and money to create the works that
3 led to people throughout the world to know and love the iconic fictional German
4 Shepherd character named Rin Tin Tin, Defendants are attempting to appropriate
5 and profit from the Rin Tin Tin legacy and claim it as their own.

6 93. Defendants' actions can only be described as an effort to reap what
7 they have not sown, and such behavior is below the accepted threshold of
8 commercial morality and fair play.

9 94. Through aggressive and unlawful actions, Defendants are attempting
10 to profit from the misappropriation of the Rin Tin Tin legacy.

11 95. Defendants are conducting business in a manner that violates United
12 States copyright law, and such behavior also constitutes federal unfair competition.

13 96. Defendants' actions are inhibiting the true owners of the copyrighted
14 works that feature the iconic fictional German Shepherd character named Rin Tin
15 Tin from effectively merchandizing the famous fictional character.

16 97. Because Defendants are using the mark RIN TIN TIN in commerce in
17 an unauthorized manner, Defendants have caused and are causing substantial and
18 irreparable harm to the goodwill associated with Plaintiffs' common law mark RIN
19 TIN TIN and will continue to damage Plaintiffs and to deceive consumers unless
20 enjoined by this Court.

21 98. As a direct, proximate and foreseeable result of Defendants' conduct
22 as alleged herein, Plaintiffs have suffered damage and injury including, without
23 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
24 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
25 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
26 professional acknowledgment and credits, and public fame, all according to proof.

27 99. As a further direct, proximate and foreseeable result of Defendants'
28 conduct as alleged herein, Plaintiffs have incurred and continues to incur attorneys'

1 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
2 under the third party/tort of another theory, according to proof.

3 100. Defendants' unlawful conduct, as alleged herein, is continuing, as is
4 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
5 address the continuing harm to the reputation and goodwill of the Rin Tin Tin
6 legacy caused by Defendants' ongoing wrongful and unlawful use of the mark RIN
7 TIN TIN in commerce, as alleged herein. Plaintiffs are therefore entitled to
8 injunctive relief, on statutory, common law and/or equitable grounds, to enjoin
9 Defendants' continuing unlawful conduct.

10 **COUNT III**

11 **[False Association - 15 U.S.C. §1125(a), *et seq.* (Lanham Act §43(a))]**

12 101. Plaintiffs repeat and incorporate by reference the allegations of
13 Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

14 102. Defendants' website, (www.rintintin.com), claims to be the "Official
15 Rin Tin Tin" site; a statement that directly implies that Defendants and their
16 website are associated or affiliated with those who created or own the multiple
17 copyrighted works that feature the iconic German Shepherd character Rin Tin Tin.
18 (See Exhibit B, attached hereto and incorporated herein by this reference.)

19 103. Defendants' website, (www.rintintin.com), features a "Licensing
20 Resource Center" where consumers are invited to learn about licensing, invest in
21 RIN TIN TIN licensing, learn the steps to obtain a licensing agreement, and initiate
22 the licensing process (See Exhibit C, attached hereto and incorporated herein by
23 this reference); such statements and information are likely to lead consumers to
24 believe that Defendants are associated or affiliated with those who created or own
25 the multiple copyrighted works that feature the iconic German Shepherd character
26 Rin Tin Tin.

27 104. The unlawful conduct of Defendants is likely to continue to cause
28 confusion, to cause mistake, and/or deceive consumers as to the origin, source,

1 affiliation, or sponsorship of the goods provided by Defendants in connection with
2 the mark RIN TIN TIN.

3 105. Consumers who are familiar with one or more of the multiple
4 copyrighted works that feature the iconic German Shepherd character named Rin
5 Tin Tin are likely to assume that goods provided by Defendants are of the same
6 high quality as the cinematography with which they are familiar.

7 106. Defendants are likely to attract consumers who are familiar with one
8 or more of the multiple copyrighted works that feature the iconic fictional German
9 Shepherd character named Rin Tin Tin and benefit financially from sales that are,
10 at least in part, influenced by these consumers' appreciation of the quality of the
11 copyrighted works with which they are familiar, as well as a false assumption that
12 Defendants are authorized by or affiliated with the creators or owners of the
13 copyrighted works.

14 107. As a direct, proximate and foreseeable result of Defendants' conduct
15 as alleged herein, Plaintiffs have suffered damage and injury including, without
16 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
17 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
18 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
19 professional acknowledgment and credits, and public fame, all according to proof.

20 108. As a further direct, proximate and foreseeable result of Defendants'
21 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
22 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
23 under the third party/tort of another theory, according to proof.

24 109. Defendants' unlawful conduct, as alleged herein, is continuing, as is
25 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
26 address the continuing harm to Plaintiffs' business, reputation and goodwill caused
27 by Defendants' ongoing false associations, as alleged herein. Plaintiffs are
28 therefore entitled to injunctive relief, on statutory, common law and/or equitable

1 grounds, to enjoin Defendants' continuing unlawful conduct.

2 **COUNT IV**

3 **[False Endorsement - 15 U.S.C. §1125(a) *et seq.* (Lanham Act §43(a))]**

4 110. Plaintiffs repeat and incorporate by reference the allegations of
5 Paragraphs 1 through 109 of this Complaint as if fully set forth herein.

6 111. Defendants sell a variety of goods that feature the image and name of
7 the iconic fictional German Shepherd character featured in multiple copyrighted
8 works in a manner that is likely to lead consumers to believe that the quality of the
9 goods are endorsed by the creator or owner of the multiple copyrighted works that
10 feature the iconic fictional German Shepherd character Rin Tin Tin.

11 112. Defendants' websites, (www.rintintin.com) and
12 (www.belleairtrading.com), make multiple direct references to the
13 cinematographic history and legacy of the iconic fictional German Shepherd
14 character named Rin Tin Tin, thereby directly implying that their use of the mark
15 RIN TIN TIN is an endorsement by the iconic fiction German Shepherd character
16 named Rin Tin Tin rather than a separate, subsequently founded, and
17 independently created brand by the name of RIN TIN TIN.

18 113. Defendants' website advertises the ability to grant licenses in the RIN
19 TIN TIN mark without owning any copyrighted works that feature the iconic
20 fictional German Shepherd character named Rin Tin Tin.

21 114. The name Rin Tin Tin is inseparably associated with the iconic
22 fictional German Shepherd character featured in multiple copyrighted works, and
23 therefore, any license or endorsement granted by Defendants would inevitably
24 cause consumers to falsely believe that such license or endorsement was associated
25 with the creator or owner of the multiple copyrighted works.

26 115. As a direct, proximate and foreseeable result of Defendants' conduct
27 as alleged herein, Plaintiffs have suffered damage and injury including, without
28 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN

1 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
2 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
3 professional acknowledgment and credits, and public fame, all according to proof.

4 116. As a further direct, proximate and foreseeable result of Defendants'
5 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
6 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
7 under the third party/tort of another theory, according to proof.

8 117. Defendants' unlawful conduct, as alleged herein, is continuing, as is
9 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
10 address the continuing harm to Plaintiffs' business, reputation and goodwill caused
11 by Defendants' ongoing false endorsements, as alleged herein. Plaintiffs are
12 therefore entitled to injunctive relief, on statutory, common law and/or equitable
13 grounds, to enjoin Defendants' continuing unlawful conduct.

14 COUNT V

15 **[False Representation - 15 U.S.C. §1125(a), *et seq.* (Lanham Act §43(a))]**

16 118. Plaintiffs repeat and incorporate by reference the allegations of
17 Paragraphs 1 through 117 of this Complaint as if fully set forth herein.

18 119. Plaintiffs are informed and believe, and on that basis allege, that
19 Defendants' representations to the public and their potential customers that
20 Defendants produce the world's only linebred Rin Tin Tin descendants are false,
21 and cannot be established as fact by Defendants.

22 120. On Defendants' website, they represent that they have the authority to
23 grant licenses in the mark RIN TIN TIN and entice their customers to "Maximize
24 the appeal and demand for your products or service by incorporating this famous
25 Hollywood icon!" thus making it unequivocally clear that they are referring to an
26 association with the iconic fictional German Shepherd character named Rin Tin
27 Tin that is the central character in several currently copyrighted works in which
28 Defendants hold no ownership interest.

121. As a direct, proximate and foreseeable result of Defendants' conduct as alleged herein, Plaintiffs have suffered damage and injury including, without limitation, loss of use, exploitation and commercialization of the RIN TIN TIN intellectual property, diminution in value of the RIN TIN TIN intellectual property, loss of earnings, earning capacity and profits, loss of reputation and goodwill, professional acknowledgment and credits, and public fame, all according to proof.

122. As a further direct, proximate and foreseeable result of Defendants' conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys' fees and costs, which Plaintiffs are entitled to recover from Defendants as damages under the third party/tort of another theory, according to proof.

123. Defendants' unlawful conduct, as alleged herein, is continuing, as is the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to address the continued harm to Plaintiffs' business, reputation and goodwill caused by Defendants' ongoing false representations, as alleged herein. Plaintiffs are therefore entitled to injunctive relief, on statutory, common law and/or equitable grounds, to enjoin Defendants' continuing unlawful conduct.

COUNT VI

[Common Law Trademark Infringement - 15 U.S.C. §1125(a), *et seq.*
(Lanham Act §43(a))]

124. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 123 of this Complaint as if fully set forth herein.

125. The iconic fictional German Shepherd character named Rin Tin Tin is a famous and immediately recognizable character throughout the United States and the world, and as such the mark RIN TIN TIN (especially when used in conjunction with a German Shepherd) has gained secondary meaning as to the source that has provided the multiple copyrighted television shows and movies owned by Plaintiffs that feature the iconic fictional German Shepherd character named Rin Tin Tin.

1 126. Consumers assume that goods and services that feature the mark RIN
2 TIN TIN are associated or affiliated with the creators or owners of the multiple
3 copyrighted works that feature the famous and iconic fictional German Shepherd
4 character named Rin Tin Tin.

5 127. Kleven received ownership of the common law trademark RIN TIN
6 TIN via an assignment from Leonard that was executed on December 10, 2005,
7 and Rin, Inc. received 50% of Kleven's ownership on or about February 1, 2013.

8 128. The multiple copyrighted television episodes and movies featuring the
9 iconic fictional German Shepherd character named Rin Tin Tin have been
10 available for sale or viewing, in one form or another, continuously and exclusively
11 for decades; therefore, the common law rights in the mark RIN TIN TIN have been
12 used continuously and exclusively and have never been abandoned.

13 129. Defendants make multiple references to Hollywood, the movies, and the
14 cinematographic history of the iconic fictional German Shepherd character named Rin
15 Tin Tin; therefore, consumers are likely to incorrectly assume that the goods and
16 services provided by Defendants in conjunction with the mark RIN TIN TIN are
17 associated or affiliated with the source of the multiple popular copyrighted works--an
18 assumption that will cause a likelihood of confusion as to source and affiliation.

19 130. Because Defendants have made every effort to associate themselves
20 with the iconic fictional German Shepherd character named Rin Tin Tin featured in
21 the many copyrighted works owned by Plaintiffs, Defendants could not have
22 acquired independent secondary meaning in the mark RIN TIN TIN.

23 131. Defendants' continued use of the mark RIN TIN TIN is deceiving the
24 consuming public, misrepresenting the source of Defendants' goods, and
25 presenting a substantial likelihood of confusion as to source or affiliation.

26 132. Defendants' use of the mark RIN TIN TIN is destroying the goodwill
27 that has been acquired through the years of hard work and dedication on behalf of
28 those who produced the multiple copyrighted works featuring the iconic fictional

1 German Shepherd character named Rin Tin Tin.

2 133. As a direct, proximate and foreseeable result of Defendants' conduct
3 as alleged herein, Plaintiffs have suffered damage and injury including, without
4 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
5 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
6 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
7 professional acknowledgment and credits, and public fame, all according to proof.

8 134. As a further direct, proximate and foreseeable result of Defendants'
9 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
10 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
11 under the third party/tort of another theory, according to proof.

12 135. Defendants' unlawful conduct, as alleged herein, is continuing, as is
13 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
14 address the continued harm to Plaintiffs' business, reputation and goodwill caused
15 by Defendants' ongoing trademark infringement, as alleged herein. Plaintiffs are
16 therefore entitled to injunctive relief, on statutory, common law and/or equitable
17 grounds, to enjoin Defendants' continuing unlawful conduct.

18 **COUNT VII**

19 **[Federal Anti-Cybersquatting Act - 15 U.S.C. §1125(c), *et seq.* (Lanham Act**
20 **§43(c))]**

21 136. Plaintiffs repeat and incorporate by reference the allegations of
22 Paragraphs 1 through 136 of this Complaint as if fully set forth herein.

23 137. Defendants purchased the Internet domain name www.rintintin.com
24 on or about December 1, 1999.

25 138. The domain name purchased by Defendants is identical to the name of
26 the iconic fictional German Shepherd character featured in the multiple
27 copyrighted works owned by Plaintiffs.

28 139. Rin Tin Tin, the name of the iconic fictional German Shepherd

1 character featured in the multiple copyrighted works owned by Plaintiffs, was a
2 famous and distinctive trademark for several decades at the time Defendants
3 registered the Internet domain name, www.rintintin.com.

4 140. Defendants have used the domain name, www.rintintin.com, to gain
5 financially from the fame and reputation of the iconic fictional German Shepherd
6 character named Rin Tin Tin featured in the multiple copyrighted works owned by
7 Plaintiffs by creating a false association with and affiliation between themselves
8 and the popular copyrighted works to sell a variety of goods.

9 141. Defendants have used the domain name, www.rintintin.com, to gain
10 financially from the fame and reputation of the iconic fictional German Shepherd
11 character named Rin Tin Tin featured in the multiple copyrighted works owned by
12 Plaintiffs by selling goods featuring the name and image of the iconic fictional
13 German Shepherd character without authorization or permission.

14 142. Defendants have used the domain name, www.rintintin.com, to gain
15 financially from the fame and reputation of the iconic fictional German Shepherd
16 character named Rin Tin Tin featured in the multiple copyrighted works owned by
17 Plaintiffs by misappropriating the goodwill associated with the common law
18 trademark in the image and name of the iconic fictional German Shepherd character.

19 143. As a direct, proximate and foreseeable result of Defendants' conduct
20 as alleged herein, Plaintiffs have suffered damage and injury including, without
21 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
22 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
23 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
24 professional acknowledgment and credits, and public fame, all according to proof.

25 144. As a further direct, proximate and foreseeable result of Defendants'
26 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
27 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
28 under the third party/tort of another theory, according to proof.

1 145. Defendants' unlawful conduct, as alleged herein, is continuing, as is
2 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
3 address the continued harm to Plaintiffs' business, reputation and goodwill caused
4 by Defendants' ongoing bad faith attempts to profit from Plaintiffs' common law
5 trademark RIN TIN TIN, as alleged herein. Plaintiffs are therefore entitled to
6 injunctive relief, on statutory, common law and/or equitable grounds, to enjoin
7 Defendants' continuing unlawful conduct.

8 **COUNT VIII**

9 **[Federal Trademark Dilution - 15 U.S.C. §1125(c), *et seq.* (Lanham Act**
10 **§43(c))]**

11 146. Plaintiffs repeat and incorporate by reference the allegations of
12 Paragraphs 1 through 146 of this Complaint as if fully set forth herein.

13 147. The name of the iconic fictional German Shepherd character named
14 Rin Tin Tin featured in the multiple popular copyrighted works owned by
15 Plaintiffs is a famous and distinctive trademark.

16 148. Plaintiffs are the senior user of the famous and distinctive mark RIN
17 TIN TIN.

18 149. Defendants' use of the identical mark RIN TIN TIN diminishes the
19 distinctiveness, uniqueness, and the crispness of the association in the minds of
20 consumers between Plaintiffs' mark RIN TIN TIN and the source of goods and
21 services which it represents.

22 150. Defendants' use of the identical mark RIN TIN TIN erodes the
23 strength of Plaintiffs' mark RIN TIN TIN by blurring its ability to serve as an
24 indicator of a single source.

25 151. Defendants' use of the identical mark RIN TIN TIN erodes the
26 strength of the Plaintiffs' mark RIN TIN TIN by tarnishing and degrading the
27 positive associations and reputation of the mark.

28 152. As a direct, proximate and foreseeable result of Defendants' conduct

1 as alleged herein, Plaintiffs have suffered damage and injury including, without
2 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
3 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
4 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
5 professional acknowledgment and credits, and public fame, all according to proof.

6 153. As a further direct, proximate and foreseeable result of Defendants'
7 conduct as alleged herein, Plaintiffs have incurred and continues to incur attorneys'
8 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
9 under the third party/tort of another theory, according to proof.

10 154. Defendants' unlawful conduct, as alleged herein, is continuing, as is the
11 harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
12 address the continuing dilution of Plaintiffs' famous and distinctive mark caused by
13 Defendants' ongoing wrongful and unlawful use of the identical mark, as alleged
14 herein. Plaintiffs are therefore entitled to injunctive relief, on statutory, common
15 law and/or equitable grounds, to enjoin Defendants' continuing unlawful conduct.

16 **COUNT IX**

17 **[Cancellation of United States Federal Trademark Registrations - Trademark** 18 **Act §2(a), *et seq.*]**

19 155. Plaintiffs repeat and incorporate by reference the allegations of
20 Paragraphs 1 through 154 of this Complaint as if fully set forth herein.

21 156. Defendants' Federal Trademark Registrations are for the same name
22 as the iconic fictional German Shepherd character featured in multiple copyrighted
23 works owned by Plaintiffs.

24 157. The iconic fictional German Shepherd character named Rin Tin Tin
25 featured in multiple copyrighted works owned by Plaintiffs was famous well
26 before Defendants filed the trademark applications that matured into Defendants'
27 Federal Trademark Registrations for the mark RIN TIN TIN.

28 158. Defendants' Federal Trademark Registrations point uniquely and

1 unmistakably to the iconic fictional German Shepherd character featured in
2 multiple copyrighted works owned by Plaintiffs.

3 159. The iconic fictional German Shepherd character named Rin Tin Tin
4 featured in multiple copyrighted works owned by Plaintiffs is sufficiently famous
5 that the use of Defendants' Federal Registrations for the mark RIN TIN TIN would
6 uniquely point to and create an association with the iconic fictional German
7 Shepherd character.

8 160. Defendants make several references to the iconic fictional German
9 Shepherd character featured in the multiple copyrighted works owned by Plaintiffs
10 on the website, www.rintitntin.com, making it unequivocal that Defendants are, in
11 fact attempting to reference the iconic fictional German Shepherd character
12 featured in the multiple copyrighted works owned by Plaintiffs.

13 161. Plaintiffs, the owners of the multiple copyrighted works that feature
14 the iconic fictional German Shepherd character Rin Tin Tin, are not associated
15 with Defendants or the goods Defendants sell or offer to sell.

16 162. Due to the fame of the iconic fictional German Shepherd character
17 Rin Tin Tin, when Defendants use Defendants' fraudulently acquired Federal
18 Trademark Registrations, consumers are highly likely to presume there is a
19 connection between Defendants and the iconic fictional German Shepherd character
20 Rin Tin Tin. Indeed, Defendants clearly intend that such connection be made.

21 163. Defendants' unlawful conduct, as alleged herein, is continuing, as is
22 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
23 address the continuing harm caused by Defendants' ongoing wrongful and
24 unlawful Federal Registrations for the mark RIN TIN TIN, as alleged herein.
25 Plaintiffs are therefore entitled to injunctive relief, on statutory, common law
26 and/or equitable grounds, to enjoin Defendants' continuing unlawful conduct.

27 ///

28 ///

1 **COUNT X**

2 **[Cancellation of United States Federal Trademark Registrations - Trademark**
3 **Act §14(3), *et seq.*]**

4 164. Plaintiffs repeat and incorporate by reference the allegations of
5 Paragraphs 1 through 163 of this Complaint as if fully set forth herein.

6 165. Defendants are using Defendants' Federal Registrations for the mark
7 RIN TIN TIN in a manner that misrepresents the source of the associated goods.

8 166. Defendants' website claims to be the "Official Site of Rin Tin Tin"
9 and features a scene of the famous Hollywood sign and a slide show of
10 photographs of Rinty and movie posters from old Rin Tin Tin movies, thus making
11 the representation that Defendants are associated or affiliated with the iconic
12 fictional German Shepherd character featured in multiple copyrighted works
13 owned by Plaintiffs, which is a material and deceptive misrepresentation of the
14 source of Defendants' goods.

15 167. Defendants' website advertises the licensing of the mark RIN TIN
16 TIN to third parties by saying "*Build your brand with RIN TIN TIN and maximize*
17 *the appeal and demand for your product or service by incorporating this famous*
18 *Hollywood icon!*" Such language is an unequivocal attempt to misrepresent the
19 source or affiliation of their goods with the iconic fictional German Shepherd
20 character named Rin Tin Tin featured in multiple copyrighted works owned by
21 Plaintiffs.

22 168. Defendants' unlawful conduct, as alleged herein, is continuing, as is
23 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
24 address the continuing harm caused by Defendants' wrongful and unlawful Federal
25 Registrations for the mark RIN TIN TIN, as alleged herein. Plaintiffs are therefore
26 entitled to injunctive relief, on statutory, common law and/or equitable grounds, to
27 enjoin Defendants' continuing unlawful conduct.

28 ///

1 **COUNT XI**

2 **[Cancellation of United States Federal Trademark Registration - Fraud-**

3 ***Torres v. Cantine Torresella*]**

4 169. Plaintiffs repeat and incorporate by reference the allegations of
5 Paragraphs 1 through 168 of this Complaint as if fully set forth herein.

6 170. When filing each federal trademark application, Defendants swore an
7 oath:

8 *“that he/she believes applicant to be entitled to use such mark in*
9 *commerce; to the best of his/her knowledge and belief no other*
10 *person, firm, corporation, or association has the right to use the mark*
11 *in commerce, either in the identical form thereof or in such near*
12 *resemblance thereto as to be likely, when used on or in connection*
13 *with the goods/services of such other person, to cause confusion, or to*
14 *cause mistake, or to deceive; and that all statements made of his/her*
15 *own knowledge are true; and that all statements made on information*
16 *and belief are believed to be true.”*

17 171. Defendants knew this representation was untrue at the time
18 Defendants made this representation to the United States Patent and Trademark
19 Office.

20 172. Defendants made this misrepresentation for the explicit purpose of
21 deceiving the United States Patent and Trademark Office into granting a federal
22 trademark registration.

23 173. The United States Patent and Trademark Office materially relied on
24 Defendants’ misrepresentations when it granted Defendants United States federal
25 trademark registrations.

26 174. Defendants United States Federal Trademark registrations will harm
27 consumers by creating source and affiliation confusion.

28 175. Defendants’ unlawful conduct, as alleged herein, is continuing, as is
the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to

1 address the continuing harm caused by Defendants' wrongful and unlawful Federal
2 Registrations for the mark RIN TIN TIN, as alleged herein. Plaintiffs are therefore
3 entitled to injunctive relief, on statutory, common law and/or equitable grounds, to
4 enjoin Defendants' continuing unlawful conduct.

5 **COUNT XII**

6 **[Unfair Competition - Cal. Bus. & Prof. Code §17200]**

7 176. Plaintiffs repeat and incorporate by reference the allegations of
8 Paragraphs 1 through 175 of this Complaint as if fully set forth herein.

9 177. The unlawful conduct of Defendants, as alleged herein, constitutes
10 unfair, unlawful, and fraudulent business practices in violation of California
11 Business and Professions Code § 17200, *et seq.*

12 178. The wrongful acts of Defendants proximately caused, and will
13 continue to cause, substantial injury to Plaintiffs, including confusion of potential
14 customers, injury to reputation, and diminution of the goodwill associated with
15 Plaintiffs' common law trademarks. These actions, if allowed to continue, will
16 cause irreparable harm and injury to Plaintiffs, the full amount of which has not
17 been ascertained, but is no less than \$5,000,000.

18 179. As a direct, proximate and foreseeable result of Defendants' conduct
19 as alleged herein, Plaintiffs have suffered damage and injury including, without
20 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
21 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
22 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
23 professional acknowledgment and credits, and public fame, all according to proof.

24 180. As a further direct, proximate and foreseeable result of Defendants'
25 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
26 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
27 under the third party/tort of another theory, according to proof.

28 181. Defendants' unlawful conduct, as alleged herein, is continuing, as is

1 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
2 address the continuing harm to Plaintiffs and the public caused by Defendant's
3 ongoing unfair, unlawful, and fraudulent business practices in violation of
4 California Business and Professions Code § 17200, *et seq.*, as alleged herein.
5 Plaintiffs are therefore entitled to injunctive relief, on statutory, common law
6 and/or equitable grounds, to enjoin Defendants' continuing unlawful conduct.

7 **COUNT XIII**

8 **[Violation of California's Consumer Legal Remedies Act - Cal. Civ. Code §**
9 **1750, *et seq.*]**

10 182. Plaintiffs repeat and incorporate by reference the allegations of
11 Paragraphs 1 through 181 of this Complaint as if fully set forth herein.

12 183. Defendants' use of the mark RIN TIN TIN and their exploitation of
13 the iconic fictional German Shepherd character named Rin Tin Tin are unfair and
14 deceptive, misrepresent the source of Defendants' goods, and misrepresent the
15 affiliation and sponsorship of Defendants' goods.

16 184. Specifically, Defendants' conduct as alleged herein includes, without
17 limitation, the following:

18 a. Misrepresenting the source and approval of Defendants' goods or
19 services [Cal. Civ. Code § 1770 (a) (2)];

20 b. Misrepresenting the affiliation, connection, or association with,
21 or certification by, another [Cal. Civ. Code § 1770 (a) (3)];

22 c. Representing that goods or services have sponsorship, approval,
23 characteristics, ingredients, uses, benefits, or quantities which they do not have or
24 that a person has a sponsorship, approval, status, affiliation, or connection which
25 he or she does not have [Cal. Civ. Code § 1770 (a) (5)].

26 185. Plaintiffs have given Defendants adequate warning to cease
27 Defendants unfair, deceptive, and misleading practices and Defendants have failed
28 and refused to do so.

1 186. As a direct, proximate and foreseeable result of Defendants' conduct
2 as alleged herein, Plaintiffs have suffered damage and injury including, without
3 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
4 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
5 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
6 professional acknowledgment and credits, and public fame, all according to proof.

7 187. As a further direct, proximate and foreseeable result of Defendants'
8 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
9 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
10 under the third party/tort of another theory, according to proof.

11 188. Defendants' unlawful conduct, as alleged herein, is continuing, as is
12 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
13 address the continuing harm to Plaintiffs and the public caused by Defendant's
14 unfair, deceptive, and misleading practices, as alleged herein. Plaintiffs are
15 therefore entitled to injunctive relief, on statutory, common law and/or equitable
16 grounds, to enjoin Defendants' continuing unlawful conduct.

17 COUNT XIV

18 **[Common Law Unfair Competition]**

19 189. Plaintiffs repeat and incorporate by reference the allegations of
20 Paragraphs 1 through 188 of this Complaint as if fully set forth herein.

21 190. By their acts as alleged herein including, without limitation,
22 Defendants' misappropriation of Plaintiff's exclusive right to exploit the iconic
23 fictional German Shepherd character named Rin Tin Tin and their unauthorized
24 use of the mark RIN TIN TIN, Defendants have engaged in common law unfair
25 competition.

26 191. As a direct, proximate and foreseeable result of Defendants' conduct
27 as alleged herein, Plaintiffs have suffered damage and injury including, without
28 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN

1 intellectual property, diminution in value of the RIN TIN TIN intellectual
2 property, loss of earnings, earning capacity and profits, loss of reputation and
3 goodwill, professional acknowledgment and credits, and public fame, all
4 according to proof.

5 192. As a further direct, proximate and foreseeable result of Defendants'
6 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
7 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
8 under the third party/tort of another theory, according to proof.

9 193. Plaintiffs are informed and believe, and on that basis allege, that
10 Defendants' unlawful conduct as alleged herein, was deliberate, despicable and
11 malicious, undertaken with a conscious and utter disregard of Defendants'
12 statutory and common law obligations to Plaintiffs, in complete disregard of
13 Plaintiffs' intellectual property rights and with a clear intention of depriving
14 Plaintiffs of the value and use of such rights, all to Defendants' own benefit.
15 Defendants' despicable conduct has subjected and continues to subject Plaintiffs to
16 cruel and unjust hardship in conscious disregard of Plaintiffs' rights so as to justify
17 an award of exemplary and punitive damages, according to proof. Plaintiffs are
18 informed and believe, and on that basis allege, that the unlawful conduct of each
19 Defendant was authorized and/or ratified by the remaining Defendants.

20 194. Defendants' unlawful conduct, as alleged herein, is continuing, as is
21 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
22 address the continuing harm to Plaintiffs and the public caused by Defendant's
23 unfair, deceptive, and misleading practices, as alleged herein. Plaintiffs are
24 therefore entitled to injunctive relief, on statutory, common law and/or equitable
25 grounds, to enjoin Defendants' continuing unlawful conduct.

26 **COUNT XV**

27 **[Common Law Infringement]**

28 195. Plaintiffs repeat and incorporate by reference the allegations of

1 Paragraphs 1 through 194 of this Complaint as if fully set forth herein.

2 196. By their acts as alleged herein including, without limitation,
3 Defendants' misappropriation of Plaintiff's exclusive right to exploit the iconic
4 fictional German Shepherd character named Rin Tin Tin, Defendants have engaged
5 in common law trademark infringement under California law.

6 197. Plaintiffs are informed and believe, and on that basis allege, that
7 Defendants' unlawful conduct as alleged herein, was deliberate, despicable and
8 malicious, undertaken with a conscious and utter disregard of Defendants'
9 statutory and common law obligations to Plaintiffs, in complete disregard of
10 Plaintiffs' intellectual property rights and with a clear intention of depriving
11 Plaintiffs of the value and use of such rights, all to Defendants' own benefit.
12 Defendants' despicable conduct has subjected and continues to subject Plaintiffs to
13 cruel and unjust hardship in conscious disregard of Plaintiffs' rights so as to justify
14 an award of exemplary and punitive damages, according to proof. Plaintiffs are
15 informed and believe, and on that basis allege, that the unlawful conduct of each
16 Defendant was authorized and/or ratified by the remaining Defendants.

17 198. Defendants' unlawful conduct, as alleged herein, is continuing, as is
18 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
19 address the continuing harm caused to Plaintiffs and the public by Defendant's
20 infringement, as alleged herein. Plaintiffs are therefore entitled to injunctive relief,
21 on statutory, common law and/or equitable grounds, to enjoin Defendants'
22 continuing unlawful conduct.

23 COUNT XVI

24 **[Intentional Interference with Prospective Economic Advantage]**

25 199. Plaintiffs repeat and incorporate by reference the allegations of
26 Paragraphs 1 through 198 of this Complaint as if fully set forth herein.

27 200. Plaintiffs are informed and believe, and on that basis allege, that
28 Defendants had knowledge of Plaintiffs' prospective economic advantage in the

1 exploitation of the iconic fictional German Shepherd character named Rin Tin Tin
2 and the mark RIN TIN TIN.

3 201. Defendants intentionally interfered with said opportunities by various
4 acts including, but not limited to, the following:

5 a. Defendants' prior and continuing misappropriation of Plaintiff's
6 exclusive right to exploit the iconic fictional German Shepherd character named
7 Rin Tin Tin, as alleged herein;

8 b. Defendants' prior and continuing unauthorized use of the mark
9 RIN TIN TIN, as alleged herein;

10 c. Defendants' prior and continuing copyright infringement, as
11 alleged herein;

12 d. Defendants' prior and continuing false association, as alleged
13 herein;

14 e. Defendants' prior and continuing false endorsement, as alleged
15 herein;

16 f. Defendants' prior and continuing trademark infringement, as
17 alleged herein.

18 202. Plaintiffs are informed and believe, and on that basis allege, that
19 Defendants' conduct as alleged herein was intentional and/or was committed with
20 a reckless disregard to the consequences of their conduct; and/or with specific
21 intent to further their own pecuniary interest and to reap unfair financial gains in
22 violation of the trust placed in them by the public, knowing all the while of the
23 damage that would be sustained by Plaintiffs.

24 203. The aforementioned acts of Defendants were wrongful and tortuous
25 independent of the interference itself for the reasons alleged above.

26 204. As a direct, proximate and foreseeable result of Defendants' conduct
27 as alleged herein, Plaintiffs have suffered damage and injury including, without
28 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN

1 intellectual property, diminution in value of the RIN TIN TIN intellectual
2 property, loss of earnings, earning capacity and profits, loss of reputation and
3 goodwill, professional acknowledgment and credits, and public fame, all
4 according to proof.

5 205. As a further direct, proximate and foreseeable result of Defendants'
6 conduct as alleged herein, Plaintiffs have incurred and continues to incur attorneys'
7 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
8 under the third party/tort of another theory, according to proof.

9 206. Plaintiffs are informed and believe, and on that basis allege, that
10 Defendants' unlawful conduct as alleged herein, was deliberate, despicable and
11 malicious, undertaken with a conscious and utter disregard of Defendants'
12 statutory and common law obligations to Plaintiffs, in complete disregard of
13 Plaintiffs' intellectual property rights and with a clear intention of depriving
14 Plaintiffs of the value and use of such rights, all to Defendants' own benefit.
15 Defendants' despicable conduct has subjected and continues to subject Plaintiffs to
16 cruel and unjust hardship in conscious disregard of Plaintiffs' rights so as to justify
17 an award of exemplary and punitive damages, according to proof. Plaintiffs are
18 informed and believe, and on that basis allege, that the unlawful conduct of each
19 Defendant was authorized and/or ratified by the remaining Defendants.

20 207. Defendants' unlawful conduct, as alleged herein, is continuing, as is
21 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
22 address the continuing harm caused to Plaintiffs by Defendant's ongoing wrongful
23 and unlawful interference, as alleged herein. Plaintiffs are therefore entitled to
24 injunctive relief, on statutory, common law and/or equitable grounds, to enjoin
25 Defendants' continuing unlawful conduct.

26 **COUNT XVII**

27 **[Negligent Interference with Prospective Economic Advantage]**

28 208. Plaintiffs repeat and incorporate by reference the allegations of

1 Paragraphs 1 through 198 of this Complaint as if fully set forth herein.

2 209. Plaintiffs are informed and believe, and on that basis allege, that
3 Defendants knew or should have known of Plaintiffs' prospective economic
4 advantage in the exploitation of the iconic fictional German Shepherd character
5 named Rin Tin Tin and the mark RIN TIN TIN.

6 210. Defendants negligently interfered with said opportunities by various
7 acts including, but not limited to, the following:

8 a. Defendants' prior and continuing misappropriation of Plaintiff's
9 exclusive right to exploit the iconic fictional German Shepherd character named
10 Rin Tin Tin, as alleged herein;

11 b. Defendants' prior and continuing unauthorized use of the mark
12 RIN TIN TIN, as alleged herein;

13 c. Defendants' prior and continuing copyright infringement, as
14 alleged herein;

15 d. Defendants' prior and continuing false association, as alleged
16 herein;

17 e. Defendants' prior and continuing false endorsement, as alleged
18 herein;

19 f. Defendants' prior and continuing trademark infringement, as
20 alleged herein.

21 211. Plaintiffs are informed and believe, and on that basis allege, that
22 Defendants' conduct was committed with specific intent to further their own
23 pecuniary interest and to reap unfair financial gains in violation of the trust placed
24 in them by the public, and Defendants should have known all the while of the
25 damage that would be sustained by Plaintiffs.

26 212. The aforementioned acts of Defendants were wrongful and tortuous
27 independent of the interference itself for the reasons alleged above.

28 213. As a direct, proximate and foreseeable result of Defendants' conduct

1 as alleged herein, Plaintiffs have suffered damage and injury including, without
2 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN
3 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
4 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
5 professional acknowledgment and credits, and public fame, all according to proof.

6 214. As a further direct, proximate and foreseeable result of Defendants'
7 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
8 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
9 under the third party/tort of another theory, according to proof.

10 215. Defendants' unlawful conduct, as alleged herein, is continuing, as is
11 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
12 address the continuing harm caused to Plaintiffs by Defendant's ongoing wrongful
13 and unlawful interference, as alleged herein. Plaintiffs are therefore entitled to
14 injunctive relief, on statutory, common law and/or equitable grounds, to enjoin
15 Defendants' continuing unlawful conduct.

16 **COUNT XVIII**

17 **[Breach of Contract – Settlement Agreement]**

18 216. Plaintiffs repeat and incorporate by reference the allegations of
19 Paragraphs 1 through 215 of this Complaint as if fully set forth herein.

20 217. Plaintiffs and their predecessors-in-interest have performed all acts,
21 covenants and conditions required of them under the Leonard v. Hereford
22 Settlement except those, if any, excused and/or made impossible or impracticable
23 by the unlawful and wrongful acts of Hereford and her successors-in-interest.

24 218. By their acts as alleged hereinabove, Defendants have breached – and
25 continue to breach – the Leonard v. Hereford Settlement.

26 219. As a direct, proximate and foreseeable result of Defendants' conduct
27 as alleged herein, Plaintiffs have suffered damage and injury including, without
28 limitation, loss of use, exploitation and commercialization of the RIN TIN TIN

1 intellectual property, diminution in value of the RIN TIN TIN intellectual property,
2 loss of earnings, earning capacity and profits, loss of reputation and goodwill,
3 professional acknowledgment and credits, and public fame, all according to proof.

4 220. As a further direct, proximate and foreseeable result of Defendants'
5 conduct as alleged herein, Plaintiffs have incurred and continue to incur attorneys'
6 fees and costs, which Plaintiffs are entitled to recover from Defendants as damages
7 under the third party/tort of another theory, according to proof.

8 221. Defendants' unlawful conduct, as alleged herein, is continuing, as is
9 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
10 address the continuing harm caused to Plaintiffs by Defendant's ongoing wrongful
11 and unlawful interference, as alleged herein. Plaintiffs are therefore entitled to
12 injunctive relief, on statutory, common law and/or equitable grounds, to enjoin
13 Defendants' continuing unlawful conduct.

14 **COUNT XX**

15 **[Specific Performance of Settlement Agreement]**

16 222. Plaintiffs repeat and incorporate by reference the allegations of
17 Paragraphs 1 through 221 of this Complaint as if fully set forth herein.

18 223. Hereford received legally adequate consideration for her promises
19 under the Leonard v. Hereford Settlement, which settlement and agreement were
20 just and reasonable to the parties thereto.

21 224. Plaintiffs and their predecessors-in-interest have performed all acts,
22 covenants and conditions required of them under the Leonard v. Hereford
23 Settlement except those, if any, excused and/or made impossible or impracticable
24 by the unlawful and wrongful acts of Hereford and her successors-in-interest.

25 225. By their acts as alleged hereinabove, Defendants have breached – and
26 continue to breach – the Leonard v. Hereford Settlement.

27 226. Defendants' breach, as alleged herein, is continuing, as is the harm to
28 Plaintiffs caused thereby. Plaintiffs have no sufficient or adequate remedy at law

1 to address the past and continuing harm caused to Plaintiffs by Defendant's
2 ongoing wrongful and unlawful breach, and the consequences thereof. Plaintiffs
3 are therefore entitled to specific performance of the terms of Leonard v. Hereford
4 Settlement, and hereby request that the court issue an Order requiring Defendants,
5 and each of them, to perform the terms of the Leonard v. Hereford Settlement.

6 **COUNT XX**

7 **[Rescission - Failure of Consideration, Fraud, Promissory Fraud, Estoppel]**

8 227. Plaintiffs repeat and incorporate by reference the allegations of
9 Paragraphs 1 through 226 of this Complaint as if fully set forth herein.

10 228. To the extent that one or more Defendants may assert that the
11 purported Kleven v. Hereford Settlement is relevant to or affects any or all of
12 Plaintiffs' claims herein, such agreement is a nullity and of no force or effect for
13 the reasons set forth below.

14 229. Defendants have so wholly breached and disregarded the purported
15 Kleven v. Hereford Settlement agreement the consideration for the obligation has
16 failed, in whole or in part, through the fault of Defendants.

17 230. In addition, Defendants, by and through Hereford, expressly and
18 materially represented to Kleven that Defendants held a registered trademark in the
19 name of Rin Tin Tin for entertainment services in the field of motion pictures
20 featuring a German Shepherd dog in class 041 (the "Motion Picture Trademark
21 Rights"), and that Defendants would surrender and transfer said Motion Picture
22 Trademark Rights to Kleven.

23 231. The representation was false and Defendants knew it was false at the
24 time the representation was made.

25 232. In truth and in fact, Defendants held no such Motion Picture
26 Trademark Rights, and thus, could not surrender and transfer same to Kleven.

27 233. Kleven was ignorant of the falsity of said representation and relied
28 upon said representation to his detriment. Kleven's reliance upon Defendants'

1 representation was reasonable and justified based upon the assurances of
2 Defendants.

3 234. In addition, Defendants, by and through Hereford, made a promise to
4 Kleven to surrender and transfer to Kleven the Motion Picture Trademark Rights
5 without any intention of performing said promise.

6 235. Such promise was made by Defendants, by and through Hereford,
7 with intent to deceive or with intent to induce Kleven to enter into such agreement.

8 236. Kleven reasonably and justifiably relied on such promise, to his
9 detriment.

10 237. Defendants did not, in fact, perform (as they had all the while secretly
11 intended) and Kleven suffered damage and injury as a proximate result thereof.

12 238. Furthermore, by Defendants' conduct subsequent to the purported
13 Kleven v. Hereford Settlement agreement, including, without limitation, agreeing
14 to and purporting to surrender and transfer to Kleven Motion Picture Trademark
15 Rights which rights Defendants did not hold and knew they did not hold, and
16 subsequently purporting to formally register with the United States Patent and
17 Trademark Office such rights in their own name, Defendants are estopped,
18 equitably and judicially, from asserting that any such agreement exists, or is in
19 effect or is binding in any manner or otherwise asserting anything with regard to
20 such an agreement other than it is a nullity, unenforceable and of no force and
21 effect.

22 239. Moreover, To the extent that one or more Defendants may assert that
23 the purported Kleven v. Hereford Settlement is relevant to or affects any or all of
24 Plaintiffs' claims herein, Plaintiffs hereby declare such purported settlement and
25 the purported agreement rescinded and of no force and effect. Plaintiffs intend the
26 service of this Complaint to constitute notice of such rescission.

27 ///

28 ///

COUNT XXI

[Elder Financial Abuse – Cal. Welfare & Institutions Code § 15610.30]

240. Kleven repeats and incorporates by reference the allegations of Paragraphs 1 through 239 of this Complaint as if fully set forth herein.

241. Kleven is 80 years old. By reason of the conduct of Defendants as alleged hereinabove, Defendants, and each of them, have committed financial elder abuse against Kleven, as defined and enumerated in California Welfare & Institutions Code § 15610.30.

242. As a direct, proximate and foreseeable result of Defendants' conduct as alleged herein, Kleven has suffered damage and injury including, without limitation, loss of use, exploitation and commercialization of the RIN TIN TIN intellectual property, diminution in value of the RIN TIN TIN intellectual property, loss of earnings, earning capacity and profits, loss of reputation and goodwill, professional acknowledgment and credits, and public fame, all according to proof.

243. As a further direct, proximate and foreseeable result of Defendants' conduct as alleged herein, Kleven has suffered injury to Kleven's person and psyche including, without limitation, great and severe emotional distress, according to proof.

244. As a further direct, proximate and foreseeable result of Defendants' conduct as alleged herein, Kleven has incurred and continues to incur attorneys' fees and costs, which Kleven is entitled to recover from Defendants as damages under the third party/tort of another theory, according to proof.

245. As a further direct, proximate and foreseeable result of Defendants' conduct as alleged herein, Kleven has incurred and continues to incur attorneys' fees and costs, which Kleven is entitled to recover from Defendants pursuant to Welfare & Institutions Code § 15657.5, according to proof.

246. Kleven is informed and believes, and on that basis alleges, that

1 Defendants' unlawful conduct as alleged herein, was deliberate, despicable and
2 malicious, undertaken with a conscious and utter disregard of Defendants'
3 statutory and common law obligations to Kleven, in complete disregard of
4 Kleven's intellectual property rights and with a clear intention of depriving Kleven
5 of the value and use of such rights, all to Defendants' own benefit. Defendants'
6 despicable conduct has subjected and continues to subject Kleven to cruel and
7 unjust hardship in conscious disregard of Kleven's rights so as to justify an award
8 of exemplary and punitive damages, according to proof. Kleven is informed and
9 believes, and on that basis alleges, that the unlawful conduct of each Defendant
10 was authorized and/or ratified by the remaining Defendants.

11 247. Defendants' unlawful conduct, as alleged herein, is continuing, as is
12 the harm to Plaintiffs caused thereby. Plaintiffs have no adequate remedy at law to
13 address the continuing harm caused to Plaintiffs by Defendant's ongoing wrongful
14 and unlawful interference, as alleged herein. Plaintiffs are therefore entitled to
15 injunctive relief, on statutory, common law and/or equitable grounds, to enjoin
16 Defendants' continuing unlawful conduct.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs respectfully request the following relief:

19 **As to all Plaintiffs**

20 1. Injunctive relief prohibiting all Defendants including, without
21 limitation, Hereford, Rin Tin Tin, Inc. and Belleair, their officers, directors, agents,
22 principals, divisions, representatives, servants, employees, associates, subsidiaries,
23 affiliates, attorneys, successors and assigns, and all persons acting by, through,
24 under or in active concert or in participation with or controlled, either directly or
25 indirectly, by any of them, from using the mark RIN TIN TIN, or any confusingly
26 similar variation thereof, as, or as a component of, a trademark, trade name or
27 otherwise, in conjunction with the advertising, promoting, marketing, offering, or
28 selling of goods and/or services in the United States, and from otherwise infringing

1 the marks;

2 2. Injunctive relief prohibiting all Defendants including, without
3 limitation, Hereford, Rin Tin Tin, Inc. and Belleair, their officers, directors, agents,
4 principals, divisions, representatives, servants, employees, associates, subsidiaries,
5 affiliates, attorneys, successors and assigns, and all persons acting by, through,
6 under or in active concert or in participation with or controlled, either directly or
7 indirectly, by any of them, from copying or displaying the name or likeness of the
8 iconic fictional German Shepherd character named Rin Tin Tin, or any
9 substantially version of the same, in conjunction with the advertising, promoting,
10 marketing, offering, or selling of goods and/or services in and from the United
11 States;

12 3. Injunctive relief requiring all Defendants including, without
13 limitation, Hereford, Rin Tin Tin, Inc. and Belleair , their officers, directors,
14 agents, principals, divisions, representatives, servants, employees, associates,
15 subsidiaries, affiliates, attorneys, successors and assigns, and all persons acting by,
16 through, under or in active concert or in participation with or controlled, either
17 directly or indirectly, by any of them, to remove all appearances of the mark RIN
18 TIN TIN from any and all Internet Websites, advertisements, and other marketing
19 or promotional materials;

20 4. The transfer of the Internet website www.rintintin.com, and any
21 other Internet website featuring the mark RIN TIN TIN, from Defendants to
22 Plaintiffs;

23 5. Cancellation of all United States trademark applications and
24 registrations for the mark RIN TIN TIN held by Defendants;

25 6. Issuance of an Order requiring Defendants, and each of them, to
26 perform the terms of the Leonard v. Hereford Settlement;

27 7. An accounting for all profits acquired by Defendants through the sales
28 of goods or apparel sold in conjunction with the unlawful use of the mark RIN TIN

1 TIN;

2 8. An award of such monetary remedies as the Court finds appropriate to
3 compensate Plaintiffs for the damages Plaintiffs have suffered as a consequence of
4 Defendants' unlawful acts, including, without limitation, loss of use, exploitation
5 and commercialization of the RIN TIN TIN intellectual property, diminution in
6 value of the RIN TIN TIN intellectual property, loss of earnings, earning capacity
7 and profits, loss of business, reputation and goodwill, loss and diminution of
8 professional acknowledgments, industry and public credits and acclaim, all
9 according to proof, as well as all of Defendants' profits attributable to such
10 unlawful acts, according to proof;

11 9. An award of monetary damages in the amount of no less than five
12 million dollars (\$5,000,000.00);

13 10. An award of treble damages or other enhanced monetary remedies to
14 Plaintiffs, according to proof;

15 11. A finding that the infringement by Defendants was intentional and
16 willful;

17 12. A finding that to the extent that parties have, at any time, reached an
18 agreement that is relevant to any or all of the above-mentioned subject matter, such
19 agreement has been and is rescinded and of no force and effect, by reason of a
20 failure of consideration, according to proof;

21 13. A finding that to the extent that parties have, at any time, reached an
22 agreement that is relevant to any or all of the above-mentioned subject matter, such
23 agreement has been and is rescinded and of no force and effect, by reason of
24 Defendants' fraud;

25 14. An award of attorneys' fees and costs as damages under the third
26 party/tort of another theory, according to proof;

27 15. An award of attorneys' fees and costs to Plaintiffs, according to
28 proof;

1 16. An award of punitive damages in the amount the Court deems just and
2 appropriate;

3 17. Such further relief as the Court may deem just and appropriate.

4 **As to Plaintiff Kleven Only (Count XX)**

5 18. An award of such monetary remedies as the Court finds appropriate to
6 compensate Kleven for the damages Kleven has suffered as a consequence of
7 Defendants' unlawful acts, including, without limitation, loss of use, exploitation
8 and commercialization of the RIN TIN TIN intellectual property, diminution in
9 value of the RIN TIN TIN intellectual property, loss of earnings, earning capacity
10 and profits, loss of business, reputation and goodwill, loss and diminution of
11 professional acknowledgments, industry and public credits and acclaim, all
12 according to proof, as well as all of Defendants' profits attributable to such
13 unlawful acts, according to proof;

14 19. An award of damages sufficient to compensate Kleven for injury to
15 Kleven's person and psyche including, without limitation, great and severe
16 emotional distress, according to proof;

17 20. An award of attorneys' fees and costs as damages under the third
18 party/tort of another theory, according to proof;

19 21. An award of attorneys' fees and costs to Kleven pursuant to California
20 Welfare & Institutions Code § 15657.5, according to proof;

21 22. An award of attorneys' fees and costs to Plaintiffs, according to
22 proof;

23 23. An award of punitive damages in the amount the Court deems just and
24 appropriate;

25 24. Such further relief as the Court may deem just and appropriate.

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